



DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2021-0024]

Request for Information on the National Flood Insurance Program's Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitats

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for information.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing this Request for Information to receive the public's input on two topics. First, FEMA seeks the public's input on revising the National Flood Insurance Program's (NFIP) floodplain management standards for land management and use regulations to better align with the current understanding of flood risk and flood risk reduction approaches. Specifically, FEMA is seeking input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities. Additionally, FEMA seeks input on how the NFIP can better promote protection of and minimize any adverse impact to threatened and endangered species, and their habitats.

DATES: Written comments are requested on or before **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION]**.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA-2021-0024, through the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Rachel Sears, Supervisory Emergency Management Specialist, Federal Insurance and Mitigation Administration,

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SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using the method identified in the **ADDRESSES** section.

Instructions: All submissions must include the agency name and Docket ID for this notice. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security notice, which can be viewed by clicking on the “Privacy and Security Notice” link on the homepage of www.regulations.gov. Commenters are encouraged to identify the number of the specific question or questions to which they are responding.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov.

II. Background

The NFIP is a program that makes flood insurance available in those States and communities that agree to adopt and enforce floodplain management ordinances to reduce future flood risk. The NFIP enables property owners in participating communities to purchase flood insurance to provide financial protection against flood losses. Joining the NFIP is an important step toward reducing a community’s risk from flooding and making a faster, more sustained recovery should flooding occur.¹ Participation in the NFIP is voluntary and is contingent on community compliance with NFIP floodplain management regulations. FEMA does not regulate land use and does not have authority

¹ See generally 42 U.S.C. 4001 *et seq.*, 44 CFR parts 59-80.

over local development. Rather, it requires participating communities to adopt the minimum NFIP requirements through zoning codes, subdivision ordinances, and/or building codes or adopt special purpose floodplain management ordinances and encourages communities to exceed those requirements and improve long-range land management and use of flood-prone areas. More than 22,500 communities have agreed to adopt and enforce floodplain management ordinances that meet minimum NFIP requirements and provide building standards designed to reduce flood loss for new and existing development.²

The NFIP minimum requirements apply to areas designated as Special Flood Hazard Areas (SFHAs) by FEMA. The SFHA is the area that would be flooded by the “base flood” (defined as the flood that has a 1 percent chance of occurring in any given year; also known as the “100-year flood”). The minimum NFIP requirements for participating communities include, but are not limited to: (1) requiring permits for all proposed construction or other development in the community to determine whether such construction or development will be placed in flood-prone areas; (2) reviewing proposed development to assure that all necessary permits have been received; (3) elevation of new and substantially improved residential structures above the base flood level; (4) elevation or dry floodproofing (made watertight) of new or substantially improved non-residential structures in Zones A;³ (5) with limited exception, the prohibition of encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway,⁴ the central portion of a riverine floodplain needed to

² See generally The Community Status Book found at <http://www.fema.gov/flood-insurance/work-with-nfip/community-status-book> (last accessed July 8, 2021).

³ See 44 CFR 64.3(a)(1). Zone A – area of special flood hazard without water surface elevations determined

⁴ See 44 CFR 60.3(d)(3), which prohibits encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

carry deeper and faster moving water; and (6) additional requirements to protect buildings in coastal areas from the impacts of waves, high velocity, and storm surge. These requirements have proved to be an effective way to reduce the flood risk to new buildings and infrastructure.⁵

In addition to protecting new buildings, the NFIP has substantial improvement and substantial damage requirements that ensure flood protection measures are integrated in structures built before a community adopted its first floodplain management requirements. “Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement.⁶ “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.⁷ When substantial improvement or substantial damage occurs, the community, which makes the determination, must ensure that the NFIP requirements, which the community has adopted, are applied to these structures so that they are protected from future flood damage.

In January 2021, the Association of State Floodplain Managers (ASFPM) and the Natural Resources Defense Council (NRDC) submitted a rulemaking petition request to FEMA seeking, among other things, revisions to the current FEMA floodplain management standards for land management and use regulations.⁸ The petition requested the agency consider adopting the higher minimum standards contained in today’s

⁵ Structures built to NFIP standards experience 65 percent less damage than structures not built to these standards and have resulted in \$2.4 billion per year in reduced flood losses, saving the nation more than \$100 billion over the last 40 years. *See* Individuals – Floodplain Management Resources, found at <http://www.fema.gov/floodplain-management/manage-risk/individuals> (last accessed June 16, 2021).

⁶ 44 CFR 59.1.

⁷ *Id.*

⁸ *See* <http://www.nrdc.org/sites/default/files/petition-fema-rulemaking-nfip-20210105.pdf> (last accessed June 21, 2021).

nationally applicable consensus model codes and standards from the International Codes Council (I-Codes) and the American Society of Civil Engineers (ASCE) *Flood Resistant Design and Construction* standard (ASCE-24) as a minimum floodplain management standard, and to develop forward-looking minimum construction and land-use standards for flood-prone areas through regulatory revision. FEMA has previously published excerpts and highlights of the flood resistant provisions of the I-Codes and ASCE-24 which generally address siting, design, construction, and elevation requirements for structures in flood hazard areas to assist communities to understand the application of consensus standards, but FEMA has not adopted these as the agency's floodplain management standards.⁹

FEMA is issuing this Request for Information to seek information from the public on the agency's current floodplain management standards to ensure the agency receives public input as part of the agency's regular review of programs, regulations, and policies, and to inform any action to revise the NFIP minimum floodplain management standards.

FEMA also requests input from the public on what measures the NFIP can take to further protect and minimize any adverse impacts to threatened and endangered species and their habitat. The Endangered Species Act (ESA) protects threatened and endangered species by preserving the ecosystems in which they live and protecting the species from harm.¹⁰ All persons, including individuals and local and state jurisdictions, are required to comply with the ESA. Section 7 (a) (2) of the ESA creates a consultation process between a Federal agency that will undertake an action, including implementing a program, and either the U.S. Fish and Wildlife Service or National Marine Fisheries Service (or both) to insure that the action does not jeopardize the continued existence of

⁹ See FEMA's Flood Building Codes Resource Page at <https://www.fema.gov/emergency-managers/risk-management/building-science/building-codes/flood> (last accessed July 7, 2021). Note that FEMA's Community Rating System is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the NFIP for floodplain management.

¹⁰ See 16 U.S.C. 1531 *et seq.*

endangered or threatened species, or result in the adverse modification of critical habitat.

Section 7 (a) (1) mandates Federal agencies to use their authorities to conserve threatened and endangered species and minimize any adverse impact to them.¹¹

The NFIP floodplain regulations are designed to encourage the adoption of adequate State and local floodplain management measures for land development.¹² This creates an opportunity for the NFIP not only to work towards its goal of reducing flood risk but simultaneously works toward the conservation of federally threatened and endangered (T&E) species and critical habitat. Conserving the natural and beneficial functions of the floodplain and reducing flood risk can work in tandem with the ESA requirement of conserving T&E species and critical habitat. Often, measures taken to conserve T&E species and their habitat in the floodplain benefit people by reducing the risk of flooding and the harm that can result to their person and property, while also conserving the natural and beneficial functions of the floodplain.

The agency is seeking input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities and also to promote protection of T&E species and their habitats. Specifically, FEMA is seeking input on opportunities for the agency to improve the minimum floodplain management standards for land management and use which better align the NFIP with the current understanding of flood risk and flood risk reduction approaches. FEMA has not revised current floodplain management standards for flood-prone area regulations since they were implemented in 1976. The agency is considering revision to these regulations based on its current understanding of flood risk and flood risk reduction approaches and is now undertaking a thorough review of the floodplain

¹¹ 16 U.S.C. 1536

¹² 42 U.S.C. 4102(c).

management standards, along with prior published studies and reports, to determine how these standards can best meet FEMA and stakeholder needs.¹³

FEMA also plans to re-evaluate the implementation of the NFIP under the ESA at the national level to complete a revised Biological Evaluation¹⁴ re-examining how NFIP actions influence land development decisions; the potential for such actions to have adverse effects on T&E species and critical habitats; and to identify program changes that would prevent jeopardy to T&E species and/or destruction or adverse modification of designated critical habitats as well as to promote the survival and recovery of T&E species. Public feedback will help FEMA with this process.

It is important to note that FEMA continually evaluates its programs and policies, as well as the regulatory program for regulations that are candidates for modification, streamlining, expansion, or repeal. FEMA does so through legally mandated review requirements (e.g., Unified Agenda reviews and reviews under section 610 of the Regulatory Flexibility Act¹⁵) and through other informal and long-established mechanisms (e.g., use of Advisory Councils, feedback from FEMA field personnel, input from internal working groups, and outreach to regulated entities and the public). This *Federal Register* notice supplements these existing extensive FEMA regulatory and program review efforts.

II. Request for Input

A. Importance of Public Feedback

Because the impacts and effects of Federal regulations and policies tend to be widely dispersed in society, members of the public are likely to have useful information,

¹³ See generally “National Flood Insurance Program: Evaluation Studies” found at <http://www.fema.gov/flood-insurance/rules-legislation/2006-evaluation> (last accessed July 8, 2021) and “Building Codes Save: A Nationwide Study of Loss Prevention” found at <http://www.fema.gov/emergency-managers/risk-management/building-science/building-codes-save-study> (last accessed July 8, 2021) among others.

¹⁴ Agencies may submit to the Services, an evaluation on the likely effects of an action, if T&E species or critical habitat are likely to be affected by Agency action.

¹⁵ 5 U.S.C. 601 *et seq.*

data, and perspectives on the benefits and burdens of FEMA's existing programs, regulations, information collections, and policies. Given the importance of public input, FEMA is seeking broad public feedback to facilitate FEMA's review and revision of existing floodplain management regulations.

B. Maximizing the Value of Public Feedback

This notice contains a list of questions, the answers to which will assist FEMA in reviewing existing floodplain management standards and also assessing the influence of NFIP implementation on local floodplain development, which subsequently has the potential to impact threatened and endangered species and their habitats. FEMA encourages public comment on these questions and seeks any other data commenters believe are relevant to FEMA's efforts. The type of feedback that is most useful to the agency includes feedback that identifies specific information that the agency should consider. For example, feedback that simply states that a stakeholder feels strongly that FEMA should change the floodplain management standards regulation but does not contain specific information on how the proposed change would impact the costs and benefits of the regulation, is much less useful to FEMA. FEMA is looking for new and/or specific information, data, and perspectives to support any proposed changes.

Commenters should consider these principles as they answer and respond to the questions in this notice.

- Commenters should identify, with specificity, appropriate minimum floodplain management standards and/or measures for increased flood risk reduction.
- Commenters should identify, with specificity, appropriate measures the agency can take to promote the conservation of T&E species and their habitats.
- Commenters should provide specific data that document the costs, burdens, and benefits of existing requirements to the extent they are available. Commenters might also address how FEMA can best obtain and consider accurate, objective

information and data about the costs, burdens, and benefits of the minimum floodplain management standards for increased flood risk reduction and increased species/habitat protection and whether there are existing sources of data that FEMA can use to evaluate the effects of the minimum floodplain management standards and increased protection of T&E species and their habitats over time.

- Particularly where comments relate to the costs or benefits of minimum floodplain management standards and protection of T&E species and their habitats, comments will be most useful when there are data available and communities have experience utilizing the minimum floodplain management standards and/or species/habitat protection to ascertain the actual impact.

C. List of Questions for Commenters

The below non-exhaustive list of questions is meant to assist members of the public in the formulation of comments and is not intended to restrict the issues that commenters may address:

- (1) FEMA has addressed risk to existing or non-conforming construction (buildings not constructed to current minimum floodplain management standards) in the regulations through the “substantial improvement/substantial damage” requirements. These requirements have largely been tied to the definitions of “substantial improvement” and “substantial damage.” Is “substantial improvement/substantial damage” the best way to address risk for non-conforming buildings? If so, should FEMA consider the use of cumulative “substantial improvement” and/or “substantial damage” requirements over a given time period as a requirement? Should “substantial improvement” and/or “substantial damage” use an assessment cost value or a replacement cost value, or are there other valuation methods that may be more appropriate? Should the regulations provide more detail on how the “substantial improvement” and/or “substantial damage” determinations should be made?

(2) The elevation of structures above expected base flood levels, called “freeboard,” is an important precept of floodplain management. “Freeboard” is usually expressed in feet above a base flood elevation for purposes of floodplain management. NFIP communities must require new, “substantially improved,” or “substantially damaged” structures in the SFHA to be elevated to the height of the one percent annual chance flood level, also referred to as the Base Flood Elevation or BFE. Some States and communities require newly constructed buildings to be built higher than the base flood elevation to further reduce the risk of flood damage with freeboard requirements set to a specific height to provide the additional margin of risk reduction above the BFE. The NFIP has strongly encouraged but not required higher elevation standards, such as those included in the I-Codes and ASCE 24. Should FEMA update flood elevation requirements for SFHAs by setting higher freeboard levels? If so, what should FEMA consider for the higher elevation levels for freeboard? What data exists to support higher elevation levels for freeboard or methods that provide a more consistent level of protection? Will freeboard elevation generally raise the market value of properties in SFHAs and if so how would the increase in market value compare to the cost of elevation? Are there other technology advancements or building standards in design and construction that should be considered beyond freeboard levels? If so, do they address other floodplain management criteria (e.g., reasonably safe from flooding; adequately anchored; methods and practices that minimize or are resistant to flood damage; water load values; wind load values; substantially impermeable)?

(3) FEMA has not developed higher minimum floodplain management standards for structures and facilities that perform critical actions as defined in 44 CFR 9.4. These structures and facilities must currently comply with the same minimum requirements as non-critical structures and facilities except for structures and facilities that are covered by

Executive Order (EO) 11988, Floodplain Management.¹⁶ Should FEMA develop higher standards for these structures and facilities? If so, why? Should FEMA consider differences between certain structures and facilities, such as use, occupancy, operational size, or public and private operators in developing higher standards? Should FEMA consider differences such as use, occupancy, operational size, or public and private operators in developing higher standards for structures and facilities performing critical actions?

(4) Recurring flooding events provide evidence that areas adjacent to the SFHA experience significant flooding and unacceptable levels of disaster suffering, yet the NFIP minimum floodplain management standards do not extend to these locations. How can the NFIP take a more risk-informed approach to defining flood hazard? Is there a need for FEMA's NFIP minimum floodplain management standards to be extended by establishing specific requirements for the areas immediately adjacent to the SFHA? If so, what specific floodplain management standards could be successful to reduce losses and hardship? What approaches would be effective for identifying these areas for communities to regulate? Would new zones or overlays depicted with the SFHA via the National Flood Hazard Layer (NFHL)¹⁷ serve this need or are there other tools that could be more effective? Should FEMA expand the SFHA generally from the 1 percent annual chance flood area to a 0.2 percent or a 0.1 percent area, and what decision rule should FEMA use to choose the appropriate area? Should the SFHA be expanded from a certain percent annual chance area to the flood of record (or whichever is higher)? Similarly, what standards or restrictions should be considered for high risk flood areas that are

¹⁶ 42 FR 26951 (May 24, 1977). Facilities that perform critical actions that are covered by Executive Order 11988 include, but are not limited to, those facilities which produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials; hospitals and nursing homes, and housing for the elderly; emergency operation and data storage centers; and power generating facilities.

¹⁷ The National Flood Hazard Layer (NFHL) is a geospatial database that contains current effective flood hazard data. This information can be used to better understand the level of flood risk and type of flooding in an area. *See generally* <http://www.fema.gov/flood-maps/national-flood-hazard-layer> (last accessed July 14, 2021).

within the SFHA (e.g., flash flood, mudslide, erosion prone, high velocity)?

Alternatively, should FEMA be aware of and/or use a different metric to identify flood risk?

(5) In the past 30 years, 1 of every 6 dollars paid out in NFIP claims has gone to a building with a history of multiple floods.¹⁸ What steps should FEMA take to reduce the disproportionate financial impact the multiple loss properties have on the NFIP? Should FEMA consider regulatory changes for properties that have repetitive losses?¹⁹ If so, what should the minimum NFIP floodplain management standards be for those properties? Should these properties be targeted for managed retreat? How should the NFIP consider issues of equity when deciding how to address these properties?

(6) FEMA must ensure that the implementation of the NFIP does not jeopardize T&E species and does not result in the destruction or adverse modification of their designated critical habitats. FEMA must also ensure the NFIP is effective in meeting its goals of providing flood insurance, mitigating flood loss, reducing flood risk, and encouraging responsible development. What additional considerations should FEMA incorporate into the NFIP minimum floodplain management standards to promote the protection and conservation of T&E species and their designated habitat? In what ways could the NFIP minimum floodplain management standards be amended to more explicitly or comprehensively protect the natural and beneficial functions of floodplains to recognize their intrinsic value and benefits to floodplain management, T&E species, and the environment generally? How do current Federal environmental requirements and standards work within NFIP participating State, local, Tribal, and territories to identify and address impacts to T&E species and their habitats? If there are State-specific

¹⁸ As of July 2019, approximately \$10.9 billion in claims have been paid on properties with two or more losses accounting for over 15 percent of FEMA's total of \$70.6 billion paid claims during the same period. See generally "OpenFEMA Dataset: FIMA NFIP Redacted Claims" found at <http://www.fema.gov/openfema-data-page/fima-nfip-redacted-claims> (last accessed July 8, 2021).

¹⁹ See 42 U.S.C. 4121.

environmental requirements and/or standards, how could changes to the NFIP support or interfere with the current State regulatory environment?

(7) How could one or more of the following specific changes to the NFIP minimum floodplain management standards benefit T&E species and their habitats while furthering the goal of improving resilience to flooding? What would the potential impact be on the NFIP participating communities?:

- (a) Limiting construction in any identified riparian buffer zone;
- (b) Requiring compensatory storage to have no net increase in projected flooding levels for all development in the SFHA;
- (c) Requiring a more restrictive regulatory floodway standard;²⁰
- (d) Requiring compensatory conservation credits/areas for all development in portions of the SFHA that provide natural and beneficial functions;
- (e) Requiring low impact development standards and/or permeable surfaces that may benefit T&E species and habitat; and/or
- (f) Prohibiting or limiting construction in any portion of the SFHA.

How should the suggested changes listed above be prioritized to best benefit T&E species while also furthering the goals of the NFIP? Are there additional changes that should be considered and if so, what are they and what is their prioritization in comparison to the changes listed?

(8) NFIP participating communities can also improve protection of T&E species and their critical habitats through their floodplain management activities. In what ways can NFIP participating communities demonstrate to FEMA that permitted floodplain development does not adversely impact T&E species and their habitats? What changes are required to existing NFIP minimum floodplain management standards to allow NFIP participating communities to better demonstrate no adverse impact? What ways, such as

²⁰ See 44 CFR 59.1 defining a regulatory floodway and 44 CFR 60.3(d)(3) for the current standard.

technical assistance or other means, could FEMA assist NFIP participating communities to help protect T&E species and their habitats?

(9) Local floodplain managers are often tasked with enforcement of NFIP minimum floodplain management standards. In what ways can FEMA strengthen the NFIP participation and increase enforcement of NFIP minimum floodplain management standards to build community resilience? How can FEMA better assist communities to mitigate flood loss and reduce risk? In what ways could FEMA better support local floodplain managers to effectively enforce the NFIP minimum floodplain management standards?

(10) While the NFIP minimum floodplain management standards are broadly applicable nationwide and provide a sound basis from which communities can improve their floodplain management programs, there may be floodplain uses, occupancies, and flooding characteristics that call for more specific regulatory initiatives. Are there any NFIP minimum floodplain management standards that currently cause hardship, conflict, confusion or create an economic or financial burden? If so, what are they and how can they be modified to reduce the burdens while still meeting the objectives of mitigating flood loss and reducing risk? Some structures in a community may be exempted from the NFIP minimum floodplain management standards through a variance. Are there changes that can be made to variance requirements to help reduce the burdens while still meeting the objectives of mitigating flood loss and reducing risk? Are there specific types of development or uses that should be considered for exemption from NFIP minimum floodplain management standards or should different standards apply? If so, what are they, why should specific types of development or uses be considered for exemption, and what different standards should be applicable?

(11) There have been recent proposals regarding disclosure of flood risk,²¹ recommending development of an affirmative obligation on the part of sellers or lessors of residential properties to disclose information about flood risk to prospective buyers or lessees. These proposals would require States and communities to establish flood risk reporting requirements for sellers and lessors as a condition of participation in the NFIP. Should States and/or local governments be required to establish minimum flood risk reporting requirements for sellers and lessors as a condition for participation in the NFIP? Should there be an affirmative obligation on the part of sellers and/or lessors of residential properties to disclose information about flood risk to prospective buyers or lessees? If so, what is the most effective way to require this disclosure? Should the process be modeled on requirements for sellers to disclose details on environmental hazards, such as lead-based paint hazards? What details should be included in the disclosure, such as knowledge of past floods and/or flood damage, a requirement to maintain flood insurance, knowledge the property is located in a SFHA at the time of offering, and the cost of existing flood insurance?

(12) The United States is experiencing increased flooding and flood risk from climate change.²² Climate change may exacerbate the risk of flooding to homeowners. Should FEMA base any NFIP minimum floodplain management standard changes on future risk and specifically on projections of climate change and associated impacts, such as sea level rise? What equity considerations should be factored into such decisions if climate change disproportionately harms underserved and vulnerable areas? What other considerations should be factored into an analysis involving climate change? Should the

²¹ See H.R. 2874 “21st Century Flood Reform Act,” 115th Congress (2017-2018) at <http://www.congress.gov/bill/115th-congress/house-bill/2874> (last accessed July 8, 2021) among others.

²² See Fourth National Climate Assessment, Chapter 3: Water found at <http://nca2018.globalchange.gov/chapter/3/>. Climate change means that flood events are on the rise. Climate change is increasing flood risk through (1) more “extreme” rainfall events,” caused by a warmer atmosphere holding more water vapor and changes in regional precipitation patterns; and (2) sea-level rise. See Rob Bailey, Claudio Saffioti, and Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding* 3 and 8, Marsh McLennan (2021).

NFIP better distinguish NFIP minimum floodplain management standards between riverine and coastal communities? Should the NFIP minimum floodplain management standards incorporate pluvial (surface/urban) flooding concerns? Are there specific measures and standards that should be taken to ensure structures can withstand the greater intensity, duration, frequency and geographic distribution of flooding events? If so, what are they and how can those measures and standards ensure structures and communities can readily adapt and increase resilience to the impacts of climate change?

(13) The current NFIP minimum floodplain management standards can be found at 44 CFR part 60 subpart A – Requirements for Floodplain Management Regulations. As part of this Request for Information seeking input on new and even transformative reforms to the NFIP minimum floodplain management standards, FEMA also is exploring potential revisions to current regulatory provisions that are unnecessarily complicated, create unintended inequities or could be streamlined. Are there current regulatory provisions that create duplication, overlap, complexity, or inconsistent requirements or unintended inequities with other FEMA or other Federal programs? Are there current regulatory provisions that present recurring difficulties for local and State officials implementing NFIP minimum floodplain management standards and if so, what improvements should be made?

(14) Are there technological advances, building standards, or standards of practice that could help FEMA to modify, streamline, or improve existing NFIP minimum floodplain management standards? If so, what are they and how can FEMA leverage those technologies and standards to achieve the agency's statutory and regulatory objectives?

(15) FEMA recognizes the vital role that State, local, Tribal, and territorial governments play in floodplain management and that they may have innovative solutions to complex floodplain management challenges. What successful mitigation policies, building design standards, building construction standards, T&E species protections,

and/or other floodplain management approaches to mitigate flood loss and reduce risk have been taken by State, local, Tribal, and territorial governments? In what ways do the current NFIP minimum floodplain management standards present barriers or opportunities to the successful implementation of those approaches? What capabilities and capacity impacts should FEMA address as it considers changes to the NFIP minimum floodplain management standards and to strengthen NFIP protection of T&E species and their habitats?

(16) As FEMA undertakes an analysis of potential effects of the NFIP on T&E species, the agency must consider the NFIP's effect on floodplain development and the extent to which NFIP actions influence land development decisions. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures; mining; dredging; filling; grading; paving; excavation, or drilling operations; or storage of equipment or materials.²³ Is information available on the NFIP's influence on floodplain development? If so, provide or identify any data or materials identifying the NFIP's influence. How can FEMA measure the NFIP's effect on floodplain development? Are there specific NFIP regulations, policies and/or development standards that currently influence State, local, Tribal, and/or territorial governments in their development decisions that may have a positive or negative impact on T&E species and their habitats? If so, what are they and how do they influence development decisions that impact T&E species and their habitats? Are there changes to those regulations, policies and/or standards that, if made, would have a positive impact on T&E species and their habitats? If so, what are those changes?

(17) FEMA is developing a national programmatic framework for nationwide compliance with the ESA and is re-examining the extent to which NFIP actions may have adverse effects on T&E species and their habitats. Should FEMA reconsider its mapping

²³ 44 CFR 59.1.

practices, including the issuance of Letters of Map Revision based on Fill (LOMR-Fs)?

Should the placement of fill material, defined as material used to raise a portion of a property to or above the Base Flood Elevation within the SFHA, be prohibited by NFIP minimum floodplain management standards? What would the impact of this change be on T&E species and NFIP participating communities?

(18) Hazard mitigation planning reduces loss of life and property by minimizing the impact of disasters, including floods. It begins with State, local, and Tribal governments identifying natural disaster risks and vulnerabilities that are common in the area and then developing long-term strategies for protecting people and property from similar events. Mitigation plans are key to breaking the cycle of disaster damage and reconstruction. How should FEMA consider integrating mitigation planning with other Federal, State, or local mitigation planning such as community planning, economic planning, coastal zone planning, and other types of planning activities to improve the overall effectiveness of mitigation planning and floodplain management activities? Are there planning best practices, processes, or data that could better inform planning decision-making and the development and implementation of floodplain management standards?

FEMA notes that this notice is issued solely for information and program-planning purposes. Responses to this notice do not bind FEMA to any further actions related to the response.

Deanne Criswell
Administrator,
Federal Emergency Management Agency.